IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABZAL ALIAS SHERAVADAR RAJIKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8 of 2003

MS KD PARMAR for Petitioner No. 1

MS NV JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner - detenu has challenged the detention order passed against him on 29/10/02. Along with the detention order, the petitioner

was also served with the order of detention of the same date. In the grounds of detention, there is a reference of one criminal case which is filed against the petitioner under the Bombay Prohibition Act on 26/10/02.

On behalf of the petitioner, it is submitted that at the relevant point of time, when the detention order was passed, the petitioner was already in judicial custody. It is submitted that the detaining authority has not properly stated as to why it was necessary to detain the petitioner under preventive detention even though he is already in judicial custody.

The learned advocate for the petitioner submits that at the relevant time the petitioner was already in judicial custody still he has been detained under preventive detention. It is submitted that the detaining auhority has not considered as to why it is still necessary to detain the petitioner even though he is in judicial custody. It is submitted that the detaining authority has merely stated that the petitioner may be released on bail at any point of time. However, the detaining authority has not stated as to on what material it has reached the conclusion that the petitioner may be released on bail at any point of time. The detaining authority has not stated anything about any such material that on what basis it has reached the said conclusion. In above view of the matter, the order of detention is required to be quashed and set aside and it is accordingly set aside, as the authority has not stated as to on what material it has reached the said conclusion about the petitioners likelihood of getting bail.

The petition is accordingly allowed. The detention order is ordered to be quashed and set aside and it is accordingly set aside. The detenu - Sher Abzal Alias Sheravadar Rajikhan Pathan is ordered to be released forthwith, if he is not required in connection with any other case. Rule is accordingly made absolute.

(P. B. Majmudar,J.)

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